

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JEFFERY DROBNICK,)	
)	
Plaintiff,)	Case No. 08 C 0164
)	
v.)	Judge Lindberg
)	
TRICAM INDUSTRIES, INC.,)	Magistrate Judge Nolan
)	
Defendant.)	JURY DEMAND

REQUEST FOR ADMISSION PURSUANT TO RULE 36(a)

NOW COMES the Defendant, TRICAM INDUSTRIES, INC., through undersigned counsel of record, and requests that Jeffery Drobnick admit that Exhibit 1 accurately states the questions asked and responses given during Mr. Drobnick's statement given in the presence of his attorney on September 21, 2007.

Respectfully Submitted,

TRICAM INDUSTRIES INC.

/s/ Paul V. Kaulas

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Louis W. Brydges, Law Offices of L.W. Brydges, Sr., 35973 North Helendale Road, Ingleside, Illinois 60041, by regular mail on January 15, 2008.

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ORIGINAL

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF L A K E)

4 CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT

5 LAKE COUNTY, ILLINOIS

6
7 JEFFERY DROBNICK,)

8 Plaintiff,)

9 vs.) No. 07 L 955

10 TRICAM INDUSTRIES,)

11 Defendant.)

12
13 RECORDED STATEMENT of JEFFERY DROBNICK, taken
14 by MR. MARK PARSKY on 21st of the September,
15 2007.
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18
19
20
21
22

23 Transcribed By: MARLO RODRIGUEZ, CSR, RPR

24 License No.: 084-004254

1 MR. PARSKY: Today's date is September 21,
2 2007. We are at the home of Jeff Drobnick. And
3 we are going to take his recorded statement
4 today. Mr. Drobnick is represented by counsel,
5 Louis Brydges. Also present is Brandon Shoe.
6 I'm Mark Parsky. I am an attorney for Tricam
7 Ladders. First of all, Mr. Drobnick and counsel,
8 we have permission to record today's statement?

9 MR. BRYDGES: Yes.

10 Do any of you have a card with you?

11 MR. PARSKY: I do.

12 EXAMINATION

13 BY MR. PARSKY:

14 Q. Mr. Drobnick, for the record, what's
15 your date of birth?

16 A. 9-9-66.

17 Q. What is your height?

18 A. Roughly 5'6".

19 UNKNOWN SPEAKER: I just want to make sure
20 this is working here. Hold on one second. Good
21 to go.

22 MR. PARSKY: We are back on. We were
23 checking to make sure the recorder was working.

24

1 BY MR. PARSKY:

2 Q. What was your approximate weight on the
3 date of your accident with the ladder?

4 A. Roughly around 150.

5 Q. What do you do for a living?

6 A. Builder-developer.

7 Q. Over the years, have you used ladders
8 with regularity?

9 A. Yes, I have always used ladders.

10 Q. In conjunction with your work?

11 A. Yes. And around the household stuff.

12 Q. In what capacity have you used ladders
13 as part of your work?

14 A. Getting up onto the next levels that
15 don't have stairs in them yet. Are you talking
16 about personally for myself?

17 Q. For yourself and on the job. Right, I'm
18 saying for yourself personally, yes.

19 A. Just getting up and making sure things
20 are done on different levels because like I said
21 there's no stairs maybe in the house yet.
22 Getting down to the basements that don't have
23 stairs to make sure all of the construction is
24 going properly.

1 Q. And over the past 20 or so years, what
2 types of things have you used ladders to do
3 around your residence?

4 A. Christmas lights, light bulbs in the
5 house, putting pictures up, normal regular
6 household duties.

7 Q. As of the date of your ladder accident,
8 would you say that you were an experienced user
9 of ladders?

10 A. Yes.

11 Q. As of the date of your accident, you
12 understood how to use ladders?

13 A. Yes, I did.

14 Q. Who purchased the ladder involved in
15 your accident?

16 A. I purchased it.

17 Q. When did you buy it?

18 A. I can't give you an honest answer on
19 that. It's been quite a few years. It's hard to
20 say. I have bought so many ladders over the
21 years. When I go to the hardware store and I see
22 a deal on a ladder, if I need one, I will buy it
23 if it's a good deal because then we use them on
24 job sites. I leave them there for my workers

1 sometimes or myself.

2 Q. The ladder appears to have been
3 manufactured in 2003 --

4 MR. BRYDGES: 2003?

5 MR. PARSKY: 2003.

6 MR. BRYDGES: Oh, 2000, okay.

7 BY MR. PARSKY:

8 Q. Does that sound reasonably close to the
9 time frame that you bought the ladder?

10 A. I'm sure it was somewhere around there.

11 Q. Where did you buy the ladder?

12 A. It had to be one of three stores. It
13 had to be either Home Depot, a Sears or an Ace.

14 Q. Do you remember specifically why you
15 would have bought this ladder?

16 A. For household stuff or job sites to get
17 up on different levels if they are small to carry
18 in my truck because I don't have a big truck.

19 Q. In looking at the ladder today, there
20 are multiple overspills of paint and various
21 substances on the ladder?

22 A. Yes.

23 Q. Was this ladder used on a job site or
24 job sites?

1 A. It's been used in my personal home
2 painting wise. It could have been used on the
3 job site. I couldn't guarantee that.

4 Q. So maybe yes, maybe no?

5 A. Right.

6 Q. When we talk about a job site, what type
7 of job site are we talking about?

8 A. That ladder would have been used for
9 like drywall -- touch up on drywall mud,
10 painting. I built the house we are in. And this
11 -- and that ladder has been used here for doing
12 drywall and crack settling and painting.

13 Q. How old is this house here?

14 A. This house was built started in 2004,
15 finished in 2005 in I believe it was May or June.

16 Q. So the ladder in question could have
17 been here while this home was being built?

18 A. Yeah. Or it could have been at my last
19 house I built before this one too.

20 Q. I take it if the ladder was here while
21 this house was being built, it could have been
22 used by yourself and it could have been used by
23 various tradesmen who were building the house?

24 A. Right. But the ladder was -- that type

1 of ladder would not have been in here. It was at
2 the drywall stage when we were doing painting and
3 stuff. This isn't the type of ladder my
4 construction guys were going to stand on to lift
5 heavy stuff.

6 Q. At the drywall stage, what type of work
7 would be performed with a ladder such as the
8 ladder involved in your accident?

9 A. Just normal painting.

10 Q. What about the installation of drywall?

11 A. No. My drywall guys used all of their
12 scaffolding and all that. They have all of their
13 own equipment. I could provide them basically
14 when we are custom painting where, you know, you
15 can't just roll the walls. You have to color the
16 walls to the ceiling, cut it out to the ceiling.

17 Q. Is it safe to say that your ladder had
18 been used for perhaps two years on a regular
19 basis prior to the date of your accident?

20 A. I would say not consistently.

21 Q. Prior to the date of your accident, had
22 anyone ever complained about the performance of
23 that ladder?

24 A. No.

1 Q. Had you yourself personally used the
2 ladder prior to the date of your accident?

3 A. Yes.

4 Q. Did you yourself have any problem
5 whatsoever with the ladder prior to the date of
6 your accident?

7 A. No.

8 Q. Can you estimate the number of times
9 that you used that particular ladder prior to the
10 date of your accident, by that I mean, the number
11 of occasions where you took it out and climbed up
12 and down?

13 A. When we moved in there, probably several
14 times doing wall hangings and stuff like that.

15 Q. Would it be safe to say that you used
16 the ladder in question more than ten times prior
17 to the date of the accident?

18 A. Yes.

19 Q. More than 20 times?

20 A. Yes.

21 Q. It's also safe to say that other
22 painters and tradesmen used your ladder prior to
23 the date of accident?

24 A. Minimum. It was mostly done in this

1 house I'm sure. We have repainted these walls
2 several times, different times.

3 Q. Prior to the date of your accident, did
4 the ladder ever shake, wobble or feel unsteady?

5 A. Not that I'm aware of.

6 Q. Prior to the date of your accident, did
7 you have reason to believe that there was
8 anything wrong with that ladder?

9 A. No.

10 Q. As an experienced ladder user, did you
11 understand the importance of maintaining your
12 balance while on a ladder?

13 A. Yes.

14 Q. As an experienced ladder user, did you
15 know that you are not supposed to overreach while
16 on a ladder, and by overreaching, I mean reaching
17 too high, too low or too far to your right or
18 left? You got to say yes.

19 A. Yes.

20 Q. And why don't you want to overreach on a
21 ladder?

22 A. Because I don't want to fall off the
23 ladder.

24 Q. On the date of your accident, did you

1 understand that a ladder such as the one you were
2 using needs to be set up on a firm, level
3 surface?

4 A. Yes.

5 Q. And why is that?

6 A. To keep the thing sturdy.

7 Q. As of the date of your accident, did you
8 understand that you are not supposed to use a
9 ladder that's damaged or broken?

10 A. Yes.

11 Q. As of the date of your accident, did you
12 understand that you are not supposed to step on
13 the top cap of the ladder?

14 A. Yes.

15 Q. The top cap is the very top step?

16 A. Yes.

17 Q. And why do you not want to stand on the
18 top cap?

19 A. Because the directions say don't stand
20 on it.

21 Q. As of the date of your accident, did you
22 understand that you are not supposed to stand on
23 the step immediately below the top cap?

24 A. Yes.

1 Q. And why do you not want to stand on the
2 step immediately below the top cap?

3 A. Just my thing is to make sure it doesn't
4 collapse, sturdy wise.

5 Q. During your use of the ladder before the
6 date of your accident, how high up had you
7 climbed?

8 A. On other job sites?

9 Q. Not on other job sites, but with this
10 particular ladder when you used it before the day
11 of the accident, you know, for whatever you were
12 using it for, how high up had you climbed on
13 those occasions at the highest point?

14 A. Probably to about right here.

15 Q. Would that be the fourth step?

16 A. I don't know how many steps it has on
17 it.

18 Q. The ladder has six steps and the sixth
19 step would be the top cap --

20 A. I can't say any higher than the fourth.

21 Q. Okay. Had you climbed up to the fourth
22 step before the day of your accident when using
23 the ladder?

24 A. I'm sure I have.

1 Q. No problems?

2 A. No. You see I'm under -- I'm not
3 overweight for the thing. It says 325 pounds.

4 Q. What task were you using the ladder to
5 do on the date of the accident?

6 A. Hanging Christmas lights.

7 Q. Where were you going to hang the
8 Christmas lights?

9 A. Over my garage doors.

10 Q. Was your first task that day to plug in
11 one end of the light?

12 A. First task, yeah. Then work my way
13 over.

14 Q. We were just outside and we took a
15 couple pictures. There is an outdoor plug
16 covered by a plastic cover; is that correct?

17 A. Correct.

18 Q. And the ladder was set up below that
19 outdoor plug; is that right?

20 A. Correct.

21 Q. And I believe -- well, when we were
22 outside before, you told us that the ladder was
23 set up with one of its sides nearest the wall or
24 the brick in between the two garage doors; is

1 that correct?

2 A. Correct.

3 Q. You can't remember whether it was the
4 right side of the ladder or the left side of the
5 ladder that was closest to the wall, but the
6 ladder was set up so you would walk up the steps
7 and you would turn?

8 A. And lead straight up for the plug I
9 would be sure of (inaudible).

10 Q. In other words, the ladder wasn't set up
11 such that the steps of the ladder were farthest
12 from the wall and the rear part of the ladder
13 that you don't climb up and down was closest?
14 The ladder was set up so that one of the sides
15 was nearest to the wall?

16 A. Yes, as I recall, that's the way it was.

17 Q. So you would have climbed up the ladder
18 and then made a short turn and then the plug
19 would have been there; is that correct?

20 A. I don't know if I had to turn or not
21 because I had the ladder and you just open the
22 thing and plug it straight in because underneath
23 it was in the brick. I can't remember if it was
24 in the brick or if it's underneath hanging in the

1 soffit.

2 Q. Describe how you set up the ladder that
3 day.

4 A. Just like I do every time I open the
5 ladder. I spread it out, make sure whatever you
6 call them things that go between the two ladder
7 pieces are down and that paint tray is down, make
8 sure it's sturdy before I get on it.

9 Q. When an A-frame ladder such as the one
10 you were using is opened up, there are spreader
11 bars that connect to the front and the rear?

12 A. Right. That's what I'm talking about.

13 Q. Okay.

14 A. Those were locked in position.

15 Q. When you say they were locked in
16 position, they were fully horizontal?

17 A. Yes.

18 Q. And how did you get the spreaders
19 horizontal?

20 A. Same way I always do; open the ladder,
21 push -- make sure they are pushed down.

22 Q. And they were pushed down?

23 A. Yes.

24 Q. And both spreader bars were horizontal?

1 A. Yes.

2 Q. And was the paint tray down?

3 A. Yes.

4 Q. By down I mean the paint tray was also
5 horizontal?

6 A. Yes.

7 Q. What surface were you setting the ladder
8 up on?

9 A. On the driveway.

10 Q. What's the driveway surface?

11 A. Asphalt.

12 Q. What was the weather like on the day of
13 the accident?

14 A. The weather was decent, dry. It was
15 about 30-degrees, I think, 32.

16 Q. There was no water or ice on the
17 driveway surface?

18 A. No, there was not.

19 Q. What were you wearing?

20 A. Jeans, probably a sweat shirt, a
21 material type tool belt, not a real heavy one,
22 just to keep, you know, a screwdriver or anything
23 I need up there on my waist, just a cheap
24 material one to keep the clips in there or

1 whatever for the lights.

2 Q. What kind of shoes were you wearing?

3 A. Tennis shoes.

4 Q. When you set up the ladder, did you make
5 sure that the front part of the ladder that you
6 climb up and down was directly in line with the
7 rear part of the ladder that you don't climb up
8 and down? In other words, the ladder was not
9 cockeyed or off --

10 A. It was not cockeyed, no.

11 Q. Is that something you specifically look
12 for?

13 A. I always make sure the ladder is secure
14 and tight.

15 Q. Before you climbed the ladder, did you
16 look down at the feet of the ladder, the very
17 bottom, and observe that all four feet were flat
18 on the driveway surface?

19 A. Yes, they were.

20 Q. Would you have climbed the ladder if all
21 four feet were not flat on the driveway surface?

22 A. No way.

23 Q. Why not?

24 A. Because I don't want to fall. I see

1 people try to set ladders in the past on job
2 sites, you know, not on flat surfaces and I see
3 what happens. I have been in the construction
4 management for 20 some years, so I have seen a
5 lot of stuff.

6 Q. So making sure that all four feet were
7 flat on the driveway, that would have been
8 something you specifically looked for?

9 A. Right. And making sure those arms are
10 locked in position.

11 Q. And when you look down at the ladder
12 feet, did you observe that if you drew lines
13 between the feet, it would form a rectangle, in
14 other words, the ladder was perfectly squared?
15 It was not cockeyed or lopsided?

16 A. I never thought of drawing lines, but
17 they were all the way they were supposed to be.

18 Q. Squared with each other?

19 A. Uh-huh.

20 Q. Would you climb a ladder if the front
21 section and the rear section were off --

22 A. You mean like twisted?

23 Q. Yeah.

24 A. No.

1 Q. And that would be something you look for
2 before you climb?

3 A. Uh-huh.

4 Q. You've got to say yes.

5 A. Yes.

6 Q. Did you make a stability check before
7 you climbed the ladder? Some people, you know,
8 maybe grab the side rails or step on --

9 A. To make sure it doesn't wobble?

10 Q. Right.

11 A. Yes, I did.

12 Q. What did you do to make your stability
13 check?

14 A. I just grabbed the ladder and see if it
15 wobbles.

16 Q. And I take it it did not?

17 A. It did not.

18 Q. Felt firm?

19 A. Uh-huh. Yes.

20 Q. You've got to say yes.

21 A. Yes.

22 Q. What did you have on your tool belt that
23 day?

24 A. Just plastic clips for the lights.

1 Q. What length did you intend to hang of
2 lights that day?

3 A. Just the length of the garage.

4 Q. And you were starting, I guess, really
5 we could say in the middle of the garage because
6 that's where the plug was?

7 A. Correct. Yes.

8 Q. How high up the ladder did you climb?

9 A. About 70 percent of the way,
10 three-quarters of the way roughly.

11 Q. Let's say the very bottom step is step
12 number one and the one above that would be number
13 two and so on. What step did you stop at?

14 A. Probably number four.

15 Q. That's step number four counting from
16 the bottom?

17 A. Correct.

18 Q. Were you able to get the lights plugged
19 in before your accident?

20 A. Yes.

21 Q. When you got to step number four, in
22 order to plug in the lights into the plug, did
23 you have to reach above your head, at head level,
24 at chest level?

1 A. I think it was about here, so a little
2 over my head or I honestly can't remember how far
3 my arm was without getting back on the ladder to
4 show me.

5 Q. So you would have reached over your head
6 with your arm, you just can't recall how much?

7 A. Right.

8 Q. That means yes?

9 A. Yes.

10 Q. Let me ask you this, did you have to
11 fully extend your arm to reach the plug?

12 A. I honestly can't remember. Like I said,
13 if I did, I would extend my arm instead of going
14 up the ladder any farther.

15 Q. Could you comfortably reach the plug
16 from the fourth step?

17 A. Yes.

18 Q. You didn't have to stretch onto your
19 tippy toes or anything like that?

20 A. No.

21 Q. In order to --

22 MR. BRYDGES: Am I blocking the way for her
23 to get out?

24 THE WITNESS: I don't know if she's leaving

1 now. She will ask I'm sure.

2 BY MR. PARSKY:

3 Q. In order to install the plug, did you
4 have to slide open a plastic cover?

5 A. No. The cover just opens on a hinge.

6 Q. What type of physical movement is
7 required to actually install the lights into the
8 plug? Is it just like plugging in a vacuum
9 cleaner?

10 A. Just plug it right into the wall socket.

11 Q. And you successfully did that before
12 your accident?

13 A. Correct. Yes.

14 Q. What else did you do while standing on
15 the ladder before your accident --

16 A. Well, I go about a foot over putting the
17 lights up and the ladder gave way.

18 Q. Have you installed any clips before the
19 accident?

20 A. Yes, I got about a foot of lights up,
21 roughly a foot.

22 Q. At what intervals did you intend to put
23 those clips? Would it have been every foot,
24 every two feet, every inch? I mean I don't know.

1 You tell me.

2 A. The clips I think there was, I don't
3 know, stand every 5, 6 inches. It's been almost
4 two years. I can't honestly remember.

5 Q. Would it be safe to say based on your
6 recollection that you had installed at least one
7 or two clips before your accident?

8 A. Yes.

9 Q. I take it that if you were able to
10 install the lights along the entire facade of the
11 garage that day that you would have had to have
12 come back down off the ladder and move the ladder
13 over as you worked your way down --

14 A. Correct.

15 Q. Had you reached the point where you had
16 to climb down and move the ladder over before
17 your accident?

18 A. No, I did not.

19 Q. What were you actually doing at the
20 moment of your accident?

21 A. Putting lights up. That's all I
22 remember. It happened so quick.

23 Q. Do you remember if you were actually
24 installing a clip, if you were pulling the string

1 downward to install the next clip or do you just
2 not remember specifically?

3 A. I do not remember.

4 Q. At the moment of your accident, had you
5 actually stopped work for any reason, for
6 instance, to look at the lights or just stop to
7 take a breather or were you actually in the
8 process of continuing to install the clips?

9 A. I was just doing the work and kept going
10 whatever I was doing.

11 Q. So you have no recollection of stopping?

12 A. Right.

13 Q. What type of physical motion is required
14 to get those clips to slide in?

15 A. Usually they're real thin. If you go to
16 any hardware store that sells Christmas lights,
17 they just slide right in. They're real thin and
18 just --

19 Q. And do they slide in between the
20 underside of the fascia and the wall, the brick
21 wall, is that --

22 A. No. I was putting it on the lip of the
23 soffit and fascia.

24 Q. So the outside --

1 A. The fascia comes down like this and the
2 soffit sits in there, so I slide it right into
3 that.

4 Q. Any difficulty doing that?

5 A. No.

6 Q. In terms of seconds or minutes, how long
7 were you on the ladder before your accident
8 happened approximately?

9 A. Not that long because it don't take that
10 long to plug it in. So I don't know, couple
11 minutes, five minutes. I can't say any longer
12 than ten. But I would say probably five because
13 I didn't get very far.

14 Q. During the five minutes that you were on
15 the ladder before your accident, did the ladder
16 shake, wobble or feel unsteady?

17 A. Not that I can recall.

18 Q. During the five minutes that you were on
19 the ladder before your accident, did you have any
20 reason to believe that there was anything wrong
21 with that ladder?

22 A. No, I did not.

23 Q. During the five minutes that you were on
24 that ladder before your accident, did you feel

1 any movement of the ladder where it was twisting
2 or turning or anything like that?

3 A. Not that I can recall.

4 Q. During the five minutes that you were on
5 the ladder, did you have occasion to look down at
6 the feet of the ladder on the driveway?

7 A. Not that I recall. I mean I checked the
8 ladder before I went up and didn't see any
9 reason. If I was wobbly, I would have felt it
10 above, I believe, and got off.

11 Q. Did you feel anything or see anything
12 that gave you any reason to believe that the feet
13 of the ladder moved at all during the five
14 minutes you were on the ladder?

15 A. No.

16 Q. Did you see anything or feel anything
17 that gave you any reason to believe that the
18 ladder twisted or turned or moved at all while
19 you were on the ladder during that five minutes
20 before the accident?

21 A. No.

22 Q. What happened at the time of the
23 accident?

24 A. All I remember is all of a sudden, that

1 ladder gave. I put my hands out because I have a
2 pacemaker. If I get hit in the chest, I'm 100
3 percent dependent on it. If I break my wire, I'm
4 gone. So I put my hands out. And my wife was
5 around the corner with one of our daughters. She
6 come over there and see me laying on the ground
7 and didn't know what happened. I'm on the
8 ground. She turns me over. I was ghost white.
9 And she got me in the house after she finally got
10 me up, got me at the kitchen table at the chair.
11 And she went back out and said the ladder looked
12 like a pretzel, you know, like you saw it out
13 there.

14 And then got me to catch my breath and
15 got me to the acute center. My main concern was
16 did I damage my pacemaker because the wires come
17 down like this. I have x-rays in the office and
18 another one there. I missed the pacemaker wire
19 by like that much because I came down here and I
20 banged on my ribs and broke both my wrists. It
21 happened so quick my first instinct was you put
22 your hands out to protect you.

23 Q. The ladder happened suddenly and without
24 -- I'm sorry, the accident happened suddenly and

1 without warning?

2 A. As far as I recall, I don't remember any
3 warning of it. I mean obviously something warned
4 me because I put my hands out.

5 Q. Before the accident, did you hear any
6 noises?

7 A. No.

8 Q. Before the accident, did you see the
9 ladder twisting, turning or bending?

10 A. I don't recall. Something did
11 something.

12 Q. But do you recall before the accident
13 actually seeing the ladder twisting, turning or
14 bending?

15 A. No.

16 Q. One second you were on the ladder and
17 the next thing you knew you were falling?

18 A. Yes.

19 Q. Before this accident, was this ladder in
20 any way, shape or form dented, bent or damaged?

21 A. No.

22 Q. All the damage that we see on the ladder
23 now and specifically the inward bends of both
24 front rails below the first step, that all came

1 about during your accident?

2 A. Correct.

3 Q. Do you remember if you were moving or
4 standing still at the moment of your accident?

5 A. There's really no reason for me to move
6 much because I only got a foot on the lights. I
7 don't know how to answer that one because --

8 Q. So if you were moving, it would have
9 been --

10 A. Basically just my arms.

11 Q. -- your arms?

12 Were you using both arms to install the
13 lights or just one arm?

14 A. I don't know. I can't think of how you
15 would do it without doing it.

16 Q. How were your feet positioned on the
17 fourth step of the ladder? Were you standing off
18 to one side of the ladder or your feet kind of
19 centered on the fourth step?

20 A. The way I'm about ladders, I'm sure my
21 feet are straight and like they were supposed to
22 be.

23 Q. So they were equal distance from the
24 center of the step?

1 **A. Correct.**

2 Q. Do you remember if you had your feet
3 braced against the inside of the upright rails or
4 whether your feet were just freestanding on the
5 step?

6 **A. I do not remember.**

7 Q. Do you remember if your body was erect
8 or whether you were bending your knees and
9 leaning into the ladder or leaning to your right
10 or left?

11 **A. I could not tell you. I don't know.**

12 MR. BRYDGES: I didn't hear what you said.

13 THE WITNESS: Huh?

14 MR. BRYDGES: I couldn't hear what you said.

15 THE WITNESS: I just said I couldn't tell
16 you. When things happen fast, you don't -- you
17 don't expect it to happen so you don't sit there
18 and look at every detail you are doing.

19 BY MR. PARSKY:

20 Q. Direction wise, which direction did you
21 fall; to your right, to your left, forward,
22 backward, combination thereof?

23 **A. I honestly couldn't tell you because my**
24 **concern was protecting my chest. You know, when**

1 you are falling, you are just thinking of
2 protecting yourself. Some people roll up into a
3 ball, you know, if they can or.

4 Q. Were you in contact with the ladder as
5 you fell?

6 A. I know I landed on the ladder if that's
7 what you are asking. That's what banged up my
8 ribs and almost got my pacemaker. When my wife
9 found me, I was on top of the ladder basically
10 when I was laying on the ground.

11 Q. I take it the ladder fell over during
12 the accident?

13 A. Yes.

14 Q. And I take it you have no recollection
15 as to which side the ladder fell on; its right
16 side, its left side, forward, backward?

17 A. Well, it didn't fall against the house
18 so it would have to fall to the left, I would
19 think.

20 Q. That would be away from the house?

21 A. Yes. Now, I'm guessing on that. I
22 think that's the only way it could fall if you
23 have the building next to you.

24 Q. When you fell, did you make contact with

1 any portion of the house?

2 A. No, I did not. I went straight down.

3 Q. And after the accident, do you recall
4 one way or the other whether any portion of the
5 ladder was in contact with the house, and by that
6 I mean the side of the house, that brick
7 partition between the --

8 A. I don't believe any ladder came in
9 contact, but I cannot 100 percent tell you yes or
10 no.

11 Q. To protect yourself, you reached out
12 with both of your hands?

13 A. Yes. As I -- all I remember is -- the
14 only thing I remember is seeing that ground come
15 real quick and I put my hands out. There wasn't
16 much time to do that because I wasn't that high
17 up in the air. I put my hands out. The only
18 thing that makes sense to me is my hands hit the
19 black top, my chest hit the ladder side.

20 Q. Do you recall that your hands hit the
21 black top or did your hands hit the ladder or
22 don't you recall?

23 A. I really can't recall. I'm just
24 guessing.

1 Q. But your hands hit something because you
2 had --

3 A. Fractured both wrists.

4 Q. -- fractured both wrists, okay.
5 What type of rib injuries did you have?

6 A. Badly bruised. They were not fractured.

7 Q. And that was from striking the ladder?

8 A. Yes.

9 Q. Your wife was the first person to attend
10 to you after the accident?

11 A. My wife and my one daughter.

12 Q. And what's your daughter's name?

13 A. Samantha.

14 Q. And they were right around the corner?

15 A. They were around on that outside wall of
16 the garage where they couldn't see nothing
17 happen. They were putting lights on the bushes.

18 Q. So Samantha and your wife didn't
19 actually see the accident, but they may have
20 heard something and they were there right
21 afterwards?

22 A. I honestly don't think they even heard.
23 They just came around and saw me laying there.

24 Q. Okay.

1 A. If I remember right.

2 Q. So Samantha and your wife didn't see the
3 accident?

4 A. No, they did not.

5 Q. After the accident, at some point you
6 took a look at the ladder; is that correct?

7 A. Yeah. Once they got me breathing right
8 and stuff like that. When we went to the
9 emergency thing, my wife pulled in the garage and
10 we left. I saw it then and it gave me chills
11 when I saw it.

12 Q. Was this before you went to the
13 emergency care unit?

14 A. I saw it, yeah. And then I saw it when
15 we came home obviously.

16 Q. When you had a chance to take a good
17 look at the ladder after the accident already
18 happened, what damage did you see?

19 A. I saw the legs bent and the bottom --
20 and the bottom step was up like a triangle
21 basically. I was trying to figure out how that
22 happened.

23 Q. Is it accurate to say that the first
24 time you saw that the legs were bent inward below

1 the first step and that the first step was bent
2 upward -- strike that. Let me rephrase that.

3 Is it accurate to say the first time you
4 saw that the ladder was damaged where the rails
5 were bent below the first step and the first step
6 was bent upward after your accident?

7 **A. That the first time I saw it was after?**

8 **Yes.**

9 Q. Yes. You didn't actually see the legs
10 bent and the step bent upward during your
11 accident, did you?

12 **A. No.**

13 Q. Did you see any other damage on the
14 ladder after the accident that you attribute to
15 the accident other than the front rails being
16 bent below the first step and the first step
17 being bent upward?

18 **A. The only damage I saw was the bottom of**
19 **the ladder.**

20 Q. Is that the damage that you believe was
21 involved in your accident?

22 **A. Yes.**

23 Q. Where did you go for medical treatment
24 after the accident?

1 A. Condell. I think it's called Condell
2 Acute Center on Grand Avenue in Gurnee, just west
3 of the tollway.

4 Q. That's an acute care center as opposed
5 to an emergency room; is that correct?

6 A. Yes.

7 Q. What treatment did you get there?

8 A. X-rays of my ribs, my pacemaker, make
9 sure that there's no damage to the wires. And
10 then they x-rayed both my arms and wrists, hands.

11 Q. How soon after your accident did you go
12 to the Condell Acute Care Center?

13 A. Say within an hour I was there. That's
14 a rough guess. I mean, I was in so much pain.
15 You know, things happen and we have three kids,
16 and we are trying to -- I mean, I wasn't bleeding
17 so you know. Kids going and --

18 Q. When you went to the Condell Acute Care
19 Center, did the medical personnel there ask you
20 what happened, how you were injured?

21 A. I'm sure they would have. I can't
22 remember for sure if they did or not.

23 Q. Do you remember providing them with a
24 history? In other words, they said how did you

1 hurt yourself?

2 A. Well, I'm sure I told them the ladder
3 collapsed when I was hanging Christmas lights.

4 Q. How did you get to the Condell Acute
5 Care Center?

6 A. My wife drove.

7 Q. So there's no ambulance involved?

8 A. No.

9 Q. After the folks at the Condell Acute
10 Care Center took the x-rays of your ribs and arms
11 and wrists, what happened next? Did they let you
12 go home?

13 A. Yes. We were there for several hours.
14 They took x-rays for some reason. And the doctor
15 comes in and says your right one is fractured,
16 your left one fractured real bad. He put -- he
17 did put -- I don't think a faux cast on the right
18 ones because he wanted me to go right to the
19 doctor on Monday, the regular doctor, which is
20 Dr. Martin Fetter. But they cast me up on both
21 wrists, couldn't really do much for the ribs.

22 He also told me at the acute center to
23 go to the heart doctor. Here's your x-rays. I
24 took the x-rays with me and got a copy here to

1 make sure I didn't damage anything with my
2 pacemaker. But from everything they could tell,
3 they said it looks like it was fine. But they
4 still had to run the series of tests on my heart
5 and pacemaker.

6 Q. Did you ever have any surgery for your
7 fractured wrist?

8 A. I had a surgery -- something developed
9 in my thumb. And they're saying maybe it was
10 probably from the trauma, the fall. It turned
11 into some type of blood vessel tumor thing or it
12 was some weird name. It was eating away at the
13 bone. They cut that to make sure it was not
14 something else. So they wrote it up as a trauma
15 thing. They did that last fall, the surgery.
16 You could see the scar right here on the thumb.
17 I don't know if you could see it or not, but it's
18 here.

19 Q. That's your right thumb?

20 A. Yes.

21 Q. How long after the accident did you
22 notice this mass on your right thumb?

23 A. I could look back. I don't know. Look
24 on the doctor's records. I couldn't tell you.

1 Q. Was it more than a year?

2 A. More than a year after that?

3 Q. The accident.

4 A. No. No, because they cut it out. I
5 think it was in the fall they cut it out. So
6 that would have been -- it happened in December,
7 and in the fall last year was on the year. So
8 less than a year.

9 Q. It would have been more than four months
10 until you noticed the mass on your --

11 A. Yeah, I'm sure it was.

12 Q. -- right thumb?

13 Which doctor told you that the mass on
14 your right thumb was attributable to your ladder
15 accident?

16 A. Well, they didn't know that. They
17 didn't know what it was until they cut it out to
18 see what it was. They took some whatever type of
19 x-rays to see what was going on. They saw there
20 was some bone damage going on. And they cut it
21 out. They said that bone come back once it was
22 -- whatever medical names they were calling it.
23 It would come back and straighten out the bone.
24 And they wrote it off as a blood vessel something

1 or other.

2 Q. Did the doctors say one way or the other
3 whether the mass on your right thumb was
4 attributable to your ladder accident or not or
5 weren't they sure?

6 A. They believe it was from the trauma of
7 the fall.

8 Q. Which doctor told you that?

9 A. Fetter.

10 Q. Could you spell that?

11 A. F-e-t-t-e-r, Martin Fetter.

12 Q. Is he local?

13 A. He's in Gurnee.

14 Q. Did you have any surgery on either of
15 your wrists as a result of this accident?

16 A. No, I did not. Just what do you call
17 it, therapy.

18 Q. Physical therapy?

19 A. Yes.

20 Q. Are you done with physical therapy for
21 your wrist?

22 A. I know my last one and my wrist really
23 started hurting so they said I needed to go back
24 when it hurt. When it was cold last week, I

1 started feeling the left one real bad. You know,
2 it started aching in -- the right ached when I
3 used it for stuff. But the left one would just
4 ache on its own right through here.

5 Q. Was there a point in time where you
6 completed your course of physical therapy and
7 they said, okay, you don't have to come back
8 unless you feel that you need to?

9 A. I'm trying to remember what they said.
10 All I know is Dr. Fetter, what do you call it,
11 prescribed me to go back to the last one.

12 MR. BRYDGES: By the way, I have \$13,000 in
13 physical therapy bills that I didn't send. I'll
14 mail those to you, mail copies to you.

15 BY MR. PARSKY:

16 Q. At some point were you discharged from
17 physical therapy where they said you don't have
18 to come back unless you want to?

19 A. No. No. They said I was doing good. I
20 don't remember exactly what they said. They did
21 basically say, you know, come back if you need
22 to.

23 Q. When was that?

24 A. Last time I was there.

1 Q. When was that?

2 A. I have to look at the dates. I can't
3 remember.

4 Q. Was it more than a month ago?

5 A. Oh, yeah.

6 Q. More than six months ago?

7 A. Yeah. Dr. Fetter was prescribing me to
8 go back there more last winter.

9 Q. Did you go back last winter?

10 A. It started feeling a little better and
11 then it ached again. So I said, you know what, I
12 will just deal with it for now. And then now I'm
13 wondering if I should have gone back because it
14 was hurting last week when it was cold out.

15 Q. So when Dr. Fetter told you you should
16 go back to physical therapy last winter, you
17 thought about it and you thought, well, I'm not
18 going to do it and you didn't go back; is that
19 correct?

20 A. Yes.

21 Q. When is the last time you saw Dr. Fetter
22 about anything related to the ladder accident?

23 A. I don't remember. Six months ago maybe,
24 four months ago. I can't 100 percent guarantee

1 how many months ago it was. I made a follow-up
2 with him with my thumb surgery, wrist. And it
3 might have been five months ago. It could have
4 been six. It could have been seven.

5 Q. The last time you saw Dr. Fetter, did he
6 tell you that there was no need to schedule an
7 appointment but you should call him if you felt
8 like you needed to come back? Is that how it was
9 left or you have an appointment with him?

10 A. No, I don't have no appointment with
11 him. He -- I always -- I always -- when I go --
12 with doctors, if I need to go, I go, you know.

13 Q. Do you have any pending doctors
14 appointments regarding anything having to do with
15 your ladder accident?

16 A. No, I do not.

17 Q. Is the last doctor's appointment
18 regarding anything having to do with your ladder
19 accident the one with Dr. Fetter approximately
20 five months ago?

21 A. Yes.

22 Q. How were your wrists immobilized
23 following the accident?

24 A. Casts up to here on both hands. This

1 one was a permanent cast. This one was a cast
2 that was -- I think you were able to take it --
3 yeah, you were able to take it off if you had to.
4 It gave me a little more movement in my fingers.
5 This one was pretty much never coming off until
6 it was ready to come off.

7 Q. So you had a plaster cast on your left
8 wrist and then sort of a splint, removable
9 splint, on your right --

10 A. Well it was a half a cast I believe is
11 what they called it.

12 Q. Both of those casts were below the
13 elbow?

14 A. Yes.

15 Q. So you could bend --

16 A. Oh, you know, I take that back. For
17 awhile, this one was above the elbow.

18 Q. This one being your left arm?

19 A. Yeah. It was up to like here. And the
20 reasons I do not remember why if he even told me
21 why it was.

22 Q. Are you right handed or left handed?

23 A. I'm right handed.

24 Q. How long did you wear the hard cast on

1 your left arm, the one above your elbow?

2 A. I honestly can't remember.

3 Q. More than a month?

4 A. What's that?

5 Q. More than a month?

6 A. Yes.

7 Q. More than two months?

8 A. I know he cut the cast off -- cut off
9 both hands and then did x-rays and put them back
10 on. I cannot remember or recall the time period
11 that was.

12 Q. Is it safe to say that it would have
13 been five months after your accident you were no
14 longer wearing casts on your arms?

15 A. Correct.

16 Q. Have you incurred any work related loss
17 as a result of the ladder accident?

18 A. Yes.

19 Q. Please describe it.

20 A. Well, first of all, I couldn't go out to
21 job sites if they are not smooth because I had to
22 protect my chest. You know, I'm paranoid of
23 that. I had a pacemaker put in two years ago.
24 They told me don't get hit in the chest. So now

1 my hands were being casted and stuff, I was
2 afraid to go on the job sites. I can't climb up
3 to the levels. So because if it was winter time,
4 I pretty much shut down. With jobs that were
5 almost done got finished and I really didn't
6 start nothing.

7 And in the wintertime, I always usually
8 start about five to six houses and the market was
9 still halfway decent. And I didn't take any
10 remodeling jobs during that time.

11 Q. What was your role on these jobs? And
12 I'm talking about both the remodeling jobs and
13 the new construction jobs?

14 A. I would do spec houses for myself. I
15 would start other paperworks, loans, from start
16 to finish being on the job sites, help staking
17 them out. You know, because -- you know, make
18 sure the foundation goes where it's at, get the
19 house started from start to finish, make myself a
20 general's fee and sell the house and make a
21 profit.

22 Q. I take it you don't do any -- strike
23 that.

24 You didn't do any of the hands on labor?

1 A. Some stuff I will. I would help with
2 some of the trimming, you know, minor stuff,
3 nothing with real heavy, you know, duty stuff,
4 but I would help putting trim in.

5 Q. Principally you had contractors --

6 A. Yes.

7 Q. -- do the hands on labor?

8 A. Right. But because we changed things
9 several times and rough framing, no stairs
10 getting in, I wasn't going up no ladder plus I
11 was scared of ladders for quite awhile.

12 Q. How soon after the accident were you
13 back full-time doing everything you were doing
14 with your business before the ladder accident?

15 A. Once the ground was not real soft where
16 you sink in because like I said I'm paranoid of
17 hitting my chest. I mean the pacemaker was new
18 to me. I had a pacemaker put in in August right
19 before the accident. So they tell me block your
20 chest, don't -- you know, so you are paranoid,
21 you know, when you do this stuff.

22 Q. How many months after your ladder
23 accident?

24 A. Say December the accident was, I would

1 probably say I didn't really feel comfortable
2 going on job sites until May because the ground
3 is saturated with snow and soft. There's no
4 smooth ground to walk on.

5 Q. So by May of 2006, you were back to
6 doing pretty much everything you were doing
7 before the ladder accident?

8 A. Except for any actual type of trimming
9 or minimum work on it.

10 Q. Have you quantified any financial loss
11 that you incurred as a result of you not doing
12 what you had done before the ladder accident from
13 the date of the accident until May of '06?

14 A. Yeah. It takes me about three months to
15 build a house. I lost about five to six houses.

16 Q. Did you still build the houses?

17 A. No.

18 Q. Why not?

19 A. Because I like to do my own stuff. I
20 mean, I like being involved. That way I know
21 it's done right.

22 Q. Those houses were never built?

23 A. The market started getting bad after
24 that so I slowed down after that. The market was

1 still good basically up through that summer and
2 then after that, I usually did from anywhere from
3 10 to 20 houses a year. In '06 -- I mean, '05,
4 brand new ground break in -- because you always
5 try to break ground in the 1st of January and get
6 the foundations in before mid February and get
7 the house decked so snow stays out. Because of
8 the injury, I didn't get those houses started,
9 you know, ready for spring sale.

10 Q. Your accident took place in December
11 of 2005 and you said that you finished up the
12 houses that were --

13 A. No. I mean, there was probably some
14 minor houses that, you know, where they were
15 putting in carpet in and stuff. Like I said, I
16 always try to break ground before February if you
17 could if your house is -- so I had work going on
18 through -- the houses are ready for spring and
19 summer.

20 Q. How many houses did you do in 2006?

21 A. Not that many. I have to look at my
22 records. I could get back to you on that.

23 Q. Were some of the -- strike that.

24 If the numbers went down in 2006 in

1 terms of the number of houses that you did, would
2 some of that have been attributable to market
3 conditions?

4 A. No, because it depends what type of
5 house you are building. I was set to build
6 several cheaper homes or less costly homes I
7 should say in the town of North Chicago. Those
8 houses always sell because of the price range.

9 Now, the houses are, you know, over 300,
10 that's what's really hurting the market. But you
11 got houses that are priced right, they were fine
12 until just recently. You know, with the interest
13 rates, you know, it would be harder to finance.
14 I'm sure you guys watch all of that though.

15 Like I said, I was selling the houses
16 faster than I could build them in
17 North Chicago.

18 Q. I guess what I still don't think I have
19 a handle on is why didn't you just start these
20 houses in May of 2006?

21 A. I mean but still I started in May of
22 2006 -- I mean, I did start other houses, but my
23 usual amount of houses I didn't start. So I
24 didn't start them in February because it was

1 getting too cold. You don't want to do
2 foundations in February. You want to get them in
3 before the cold. I won't start a foundation
4 unless the weather is unusual.

5 In May, I just basically went right back
6 to work in my normal schedule. It threw me off
7 the schedule five or six houses because I had
8 several lots I couldn't build on in
9 North Chicago.

10 Q. Is it accurate to say you have not
11 quantified any business loss that you incurred as
12 a result of the ladder accident? In other words,
13 you don't have a number for me today?

14 A. Not today. I have to put down and come
15 up with what I sold houses for and what my profit
16 range is. I could tell you right now what I pay
17 myself in general fees for a house, but then my
18 profits on the North Chicago house were from 35
19 to 55 and then plus my generaling fee. It all
20 depends how quickly it sells.

21 And I think the lowest I made down there
22 is 35 on a house, the last one I just sold down
23 there. And then plus my generaling fee, I pay
24 myself a generaling fee during construction so

1 it's income for me to pay my bills. You know, I
2 pay myself 20, 25,000 per house for a generaling
3 fee.

4 Q. So you don't have a number today?

5 A. No.

6 Q. Has this accident affected your heart
7 condition at all?

8 A. Not that I'm aware of.

9 MR. PARSKY: Okay. I think that's all I
10 have.

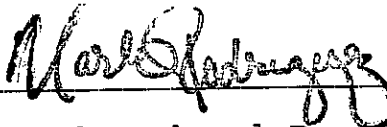
11 (Whereupon, which were
12 all proceedings recorded on
13 said date and said time.)
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1 STATE OF ILLINOIS)

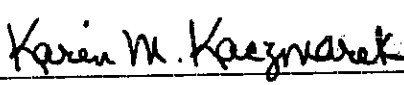
2) SS:

3 COUNTY OF C O O K)

4
5 Marlo Rodriguez, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 transcribed the proceedings of said recorded
9 statement, and that the foregoing is a true and
10 correct transcript of her shorthand notes so
11 taken as aforesaid, and contains the proceedings
12 given at said recorded statement.

13
14 
15 Certified Shorthand Reporter

16
17 SUBSCRIBED AND SWORN TO
18 before me this 7th day
19 of January 2008.

20
21
22 
23 Notary Public

24
